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CITY OF SAN DIEGO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ACHILLES D. CORELLEONE,)	Case No. 07cv2094 L (NLS)
Plaintiff,)	
v.)	
STATE OF CALIFORNIA; CITY OF SAN)	MEMORANDUM OF POINTS AND
DIEGO, CA; COUNTY OF SAN DIEGO, CA;)	AUTHORITIES IN SUPPORT OF
JOHN DOES 1 THRU 5)	CITY OF SAN DIEGO'S MOTION TO
Defendants.)	DISMISS
)	Date: April 28, 2008
)	Time: 10:30 a.m.
)	Court: Hon. James Lorenz
)	
)	NO ORAL ARGUMENT REQUESTED

I

INTRODUCTION AND FACTUAL BACKGROUND

Plaintiff, proceeding *pro se*, has filed a "Complaint Under the Civil Rights Act 42 U.S.C. §1983." His Complaint, however, is not a complaint at all, but a legal brief. Plaintiff seems to be complaining that a former version of California Penal Code § 647(e) is unconstitutional and should not be enforced by police officers. No individual officers are named as Defendants or otherwise identified in the Complaint. The City of San Diego ("City"), however, is a named Defendant.

City now moves to dismiss Plaintiff's Complaint on the following grounds: (1) pursuant to Rule 8(a)(1) and (2) of the Federal rules of Civil Procedure, because it contains neither a short and plain statement of the grounds upon which the court's jurisdiction depends, nor a short and plain statement of the claim showing that the pleader is entitled to relief; (2) pursuant to Rule 10(b) for failure to use numbered paragraphs containing a statement of a single set of circumstances; and (3) pursuant to Rule 12(b)(6) for failure to state a claim for relief.

II

ARGUMENT

A. PLAINTIFF'S COMPLAINT DOES NOT COMPLY WITH RULE 8

Rule 8(a) of the Federal Rules of Civil Procedure requires that a complaint must "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Specifically, Rule 8(a)(1) states that a complaint must contain "a short and plain statement of the grounds upon which the court's jurisdiction depends." Rule 8(a)(2) also states that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Plaintiff's complaint fails to satisfy these requirements.

Rule 8 requires that a complaint's averments be simple, concise and direct. The complaint should include a statement asserting the basis for the Court's jurisdiction, a statement of the claim, and a demand for the relief the plaintiff seeks. *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996). A "complaint should state only enough facts, in simple, concise, and direct terms to show what plaintiff's claims are and to allow defendant to respond." *Politico v. Promus Hotels, Inc.*, 184 F.R.D. 232, 233 (E.D.N.Y. 1999). The traditional pleading style as codified in the Federal Rules of Civil Procedure, examples of which are provided in the Appendix of Forms^{6/} of the Federal Rules, are not

^{6/} Federal Rule of Civil Procedure 84 provides for an Appendix of Forms "intended to indicate the simplicity and brevity of statement which the rules contemplate." *McHenry*, 84 F.3d at 1177 (citing Fed. Rule Civ. Pro. 84).

1 an attempt to impede the rights of *pro se* plaintiffs. These simple rules are necessary for
2 effective and efficient litigation and, in fact, assist those untrained in the law. *Brown v.*
3 *Califano*, 75 F.R.D. 497, 498-99 (D.D.C. 1997). However, “even a *pro se* complaint is
4 subject to dismissal if the pleading fails reasonably to inform the adverse party of the
5 asserted cause of action.” *Id.* At 499. Complaints, as in this case, that do not comply
6 with these simple rules deny defendants a fair opportunity to frame responsive
7 pleadings.

8 In this case Plaintiff’s Complaint is decidedly not simple, concise or direct. It is an
9 eleven page legal brief that is clearly not in the form of a complaint. It should be
10 dismissed, subject to repleading in the appropriate format should the Court allow
11 amendment.

12 **B. PLAINTIFF’S COMPLAINT DOES NOT COMPLY WITH RULE 10**

13 Rule 10(b) of the Federal Rules of civil procedure states, in pertinent part:

14 All averments of claim or defense shall be made in numbered paragraphs,
15 the contents of each of which shall be limited as far as practicable to a
16 statement of a single set of circumstances; Each claim founded upon
17 a separate transaction or occurrence ... shall be stated in a separate count
of defense whenever a separation facilitates the clear presentation of the
matters set forth.

18 Defendant City recognizes that enforcement of Rule 10(b) is discretionary and
19 should be ordered “only when necessary to facilitate clear presentation” of claims that
20 would enable a defendant to plead in response. *Beagleman v. Owens-Illinois Glass Co.*,
21 26 F.R.D. 181, 182-83 (S.D.N.Y. 1960). Nevertheless,
22

23 Experiences teaches that, unless cases are pled clearly and precisely,
24 issues are not joined, discovery is not controlled, the trial court’s docket
becomes unmanageable, the litigants suffer, and society loses confidence
in the court’s ability to administer justice.

25 *Anderson v. District Bd. Of Trustees*, 77 F.3d 364, 367 (11th Cir. 1996).
26

27 In this case, Plaintiff has prepared a legal brief, not a complaint. Legal
28 arguments, including numerous citations to case law, clearly do not belong in a

1 Complaint and unnecessarily complicate the task of responding. Defendant City,
2 therefore, respectfully requests that, if Plaintiff is permitted to amend his Complaint, that
3 he be ordered to do so in compliance with Rule 8 and Rule 10.
4

5 **C. PLAINTIFF HAS FAILED TO STATE A CLAIM AGAINST THE**
6 **CITY OF SAN DIEGO**

7 **(1) Plaintiff's Complaint Refers to an Obsolete Statute**

8 Plaintiff's Complaint is premised on what he claims is the unconstitutional
9 enforcement of a section of California's disorderly conduct statute, California Penal Code
10 § 647(e). A former version of this section was declared unconstitutional in *Kolender v.*
11 *Lawson*, 461 U.S. 352 (1983) with respect to the requirement for showing identification
12 to a police officer. (Complaint, pp. 1-2.)¹ Although Plaintiff does not quote from the
13 statute itself, he appears to be paraphrasing the earlier version of the statute that was
14 replaced by the legislature in 2007. Section 647, as currently enacted, states, in
15 pertinent part:
16

17 Any person who commits any of the following acts is guilty of
18 disorderly conduct, a misdemeanor: ...

19 (e) Who lodges in any building, structure, vehicle or place, whether
20 public or private, without the permission of the owner or person entitled to
21 the possession or in control of it.

22
23 ¹ The former section to which Plaintiff refers stated as follows:

24 Every person who commits any of the following acts is guilty of disorderly conduct, a
25 misdemeanor: (e) Who loiters or wanders upon the streets or from place to place
26 without apparent reason or business and who refuses to identify himself and to account
27 for his presence when requested by any peace officer to do so, if the surrounding
28 circumstances are such as to indicate to a reasonable man that the public safety
demands such identification.

1 There is nothing in current § 647(e), or any other current subsection of § 647, that refers
2 to a person providing identification to a police officer. Plaintiff can hardly complain about
3 the unconstitutional enforcement of a statute that no longer exists.

4 In his Prayer For Relief, Plaintiff seeks an injunction against enforcement of the
5 former version of California Penal Code § 647(e). Such relief is not cognizable since
6 the statute has been rewritten, and § 647(e), as described by Plaintiff, has been
7 replaced by a completely new subsection.
8

9 **(2) Plaintiff Not Does State a Claim Against the City Under *Monell***

10 In *Monell v. Department of Social Services*, 436 U.S. 658 (1978), the Supreme
11 Court held that municipalities were “persons” under 42 U.S.C. section 1983, and could
12 be held liable for causing a constitutional violation. Liability for a police officer’s actions at
13 the scene under section 1983, however, is solely personal. *Duisen v. Administrator and*
14 *Staff, Fulton St. Hosp., No.1, Futon, Mo.*, 332 F.Supp. 125 (W.D. Mo. 1971). Since
15 liability under section 1983 is personal, the doctrine of respondeat superior is
16 unavailable to impose vicarious liability under this section on another. *Ellis v. Blum*, 643
17 F.2d 68 (2d Cir. 1981). A local government cannot be found liable under section 1983
18 based on a theory of respondeat superior alone. *Monell v. Department of Social*
19 *Services*, 436 U.S. 658, 691 (1978).

20 In order to maintain a section 1983 action against a municipality, Plaintiff must
21 plead and prove that the “action that is alleged to be unconstitutional implements or
22 executes a policy statement, ordinance, regulation, or decision officially adopted and
23 promulgated by that body’s officers.” *Id.* at 690; see also *Kirkpatrick v. City of Los*
24 *Angeles*, 803 F.2d 485, 491 (9th Cir. 1986); *Carter v. Three Unknown Police Officers*,
25 619 F.Supp. 1253, 1361 (N.D. Del. 1985). *Monell* holds that the City may only be held
26 accountable if the deprivation was the result of municipal “custom or policy.” *City of*
27 *Oklahoma City v. Tuttle*, 477 U.S. 808, 877 (1985). Hence, it provides a fault-based
28 analysis for imposing liability. *Id.* at 818.

1 In Plaintiff's complaint, he identifies no ordinance or regulation other than
2 enforcement of the obsolete version of Penal Code § 647(e). Since no other custom or
3 policy is specifically identified, Plaintiff cannot state a claim against the City for a
4 constitutional violation under *Monell*.

5 **III**

6 **CONCLUSION**

7 For the foregoing reasons, Defendant City of San Diego respectfully requests that
8 its Motion to Dismiss be granted.

9
10 Dated: February 13, 2008

MICHAEL J. AGUIRRE, City Attorney

11
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14 Deputy City Attorney

15 Attorneys for Defendants
16 CITY OF SAN DIEGO
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